

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERMAN FREE STATE OF
BAVARIA, *et al.*,

Case No. 1:06-CV-407

Plaintiffs,

Hon. Richard Alan Enslen

v.

TOYOBO CO., LTD, *et al.*,

JUDGMENT

Defendants. /

This matter is before the Court on Defendant Thomas Edgar Bachner Jr.'s Motion to Dismiss Plaintiffs German Free State of Bavaria and German State of North Rhine-Westphalia's Second Amended Complaint under Federal Rule of Civil Procedure 12(c). In light of the briefing, there is no reason for oral argument. W.D. Mich. LCivR 7.2(d).

The same standard is applied to a Rule 12(c) motion for judgment on the pleadings as is applied to a Rule 12(b)(6) motion to dismiss. *See Ross, Brovins & Oehmke, P.C. v. Lexis Nexis Group*, 463 F.3d 478, 482 (6th Cir. 2006). The Court must construe the complaint in a light most favorable to the plaintiffs, accept all the factual allegations as true, *Smith v. City of Salem*, 378 F.3d 566, 568 (6th Cir. 2004), and determine whether the plaintiffs undoubtedly can prove no set of facts in support of their claims that would entitle them to relief. *Roberson v. Tenn.*, 399 F.3d 792, 794 (6th Cir. 2005); *Arrow v. Fed. Reserve Bank*, 358 F.3d 392, 393 (6th Cir. 2004). Though decidedly liberal, Rule 12(b)(6) requires more than the bare assertion of legal conclusions. *Gregory v. Shelby County*, 220 F.3d 433, 446 (6th Cir. 2000).

On October 10, 2007, the Court granted Defendant Mark Steven Pickett's Motion to Dismiss Plaintiffs' Second Amended Complaint under Federal Rules of Civil Procedure 9(b) and 12(b)(6). *See*

German Free State of Bavaria v. Toyobo Co., LTD, No. 1:06cv407, 2007 WL 2986475 (W.D. Mich. Oct. 10, 2007). The Court finds that Defendant Bachner is similarly situated to Pickett because the same claims are brought against him, the same facts are relied upon, and there are otherwise no material differences between the parties.

In Plaintiffs' Response to Defendant Bachner's Motion to Dismiss, Plaintiffs admittedly knew what to expect.

In light of the October 10, 2007 decision, plaintiffs presume that the Court is inclined to grant Bachner's motion for judgment on the pleadings. But it should not grant Bachner's motion. Rather, the Court should reconsider and correct the palpable defects in its October 10, 2007 decision and reinstate this action against Bachner and Pickett.

(Pls.' Resp. 3.) The Court denies Plaintiffs' Motion for Reconsideration because there are no palpable defects by which the Court and the parties have been misled. *See* W.D. Mich. LCivR 7.4(a). Based on Plaintiffs' briefing and the Second Amended Complaint, the Court discerns no reason to treat Defendant Bachner's Motion to Dismiss differently than it did Pickett's because it again finds that Plaintiffs undoubtedly can prove no set of facts in support of their claims that would entitle them to relief. *See Hanover Ins. Co. v. Am. Eng'g Co.*, 105 F.3d 306, 312 (6th Cir. 1997) (citing *Petition of U.S. Steel Corp.*, 479 F.2d 489, 493 (6th Cir. 1973)) ("The 'law of the case' doctrine precludes a court from 'reconsideration of identical issues.'"); *Coal Res., Inc. v. Gulf & W. Indus., Inc.*, 865 F.2d 761, 766 (6th Cir. 1989) (citing *Kori Corp. v. Wilco Marsh Buggies & Draglines, Inc.*, 761 F.2d 649, 657 (Fed. Cir. 1985)) ("Issues decided at an early stage of the litigation, either explicitly or by necessary inference from the disposition, constitute the law of the case."). Thus, the Court will grant Defendant Bachner's Motion to Dismiss and adopt by reference all applicable facts and analysis contained in its

decision of *German Free State of Bavaria v. Toyobo Co., LTD*, No. 1:06cv407, 2007 WL 2986475 (W.D. Mich. Oct. 10, 2007).¹

THEREFORE, IT IS HEREBY ORDERED that Defendant Thomas Edgar Bachner Jr.'s Motion to Dismiss Plaintiffs' Second Amended Complaint under Federal Rule of Civil Procedure 12(c) (Dkt. No. 170) is **GRANTED**, and all of Plaintiffs German Free State of Bavaria and German State of North Rhine-Westphalia's claims against Defendant Bachner are **DISMISSED WITH PREJUDICE**.

DATED in Kalamazoo, MI:
January 2, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE

¹The Court also adopts by reference applicable facts and analysis contained in its prior Opinion granting Defendant Bachner's Motion to Dismiss Plaintiffs' First Amended Complaint. *See German Free State of Bavaria v. Toyobo Co., LTD*, 480 F. Supp. 2d 958 (2007).